

SIEMENS

PATENT
Attorney Docket No. 2002P13033WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	T. Talanis et al.)	Group Art Unit:	2169
)		
Serial No.:	10/524,782)	Examiner:	Nguyen, Phong H.
)		
Filed:	02/16/2005)	Confirmation No.	3400
Title:	APPARATUS, IN PARTICULAR AN AUTOMATION DEVICE, HAVING A FILE DIRECTORY WHICH IS STORED IN A FILE			

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Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF UNDER 37 CFR 41.41

Sir:

Pursuant to 37 C.F.R. § 41.41, this Reply Brief is responsive to the Examiner's Answer mailed February 13, 2008. This is not a substitute for the Appeal Brief filed under 37 CFR 41.37. Any ground for rejection in the Examiner's Answer that is not refuted herein is considered by Appellants to have been sufficiently argued in the Appeal Brief, such that no further comment is needed herein. Arguments herein focus on errors and new arguments presented in the Examiner's answer.

The Examiner's substantive response to Appellants' argument, beginning on page 11 of the Examiner's Answer, presents new points in an attempt to rebut the Appellants' contentions that the prior art combination is deficient.

I. REPLY TO EXAMINER ARGUMENT REGARDING HIERARCHICAL RELATIONSHIPS
AT PAGE 11 OF THE ANSWER

With regard to claim 19, the Answer provides a different and deficient response to counter the argument that Carpentier is misinterpreted as disclosing the file directory structure of claim 19. While appellants continue to argue that neither Figure 5 nor the citation at page 16, lines 21-23 disclose “a first hierarchy level and a second hierarchy level designed as a subordinate level of the first hierarchy level ...” the Examiner’s Answer now contends that “Carpentier teaches that any hierarchy of folders may include top-down hierarchy of folders, which contains at least a folder and a subfolder ...” See page 11. Still, there is no disclosure of any specific hierarchical relationships for Appellants’ claimed subject matter and it is not seen that the Examiner can carry the burden to show otherwise. Although the new point of argument does contend otherwise, there is no disclosure (in Carpentier) of specific hierarchical relationships and the Examiner provides no citation to support a different view. The appellants do not suggest that they invented hierarchical structures, and the mere identification that such structures exist in the prior art provides no suggestion for that which is claimed. Rather, the claimed feature must be evaluated in the context of the combination being claimed. The Examiner has not fully and correctly read the claimed structure on the prior art.

Also with regard to claim 19, the Answer (pages 11- 12) addresses an error in interpreting Figure 5 but that correction was limited to the assertion that folders 310 and 342 are at different hierarchical levels, instead of what is now suggested: that files 320 and 344 are at different levels. None of this is responsive to the real issue: Figure 5 does not illustrate hierarchical relationships. The reference does not disclose any specific hierarchical relationships. The Examiner has not and cannot cite any passage in the Carpentier reference to support illustration in Figure 5 of hierarchical relationships. Nothing but incomplete pieces can be gleaned from the text or the figures to support the Examiner’s assertion. This is not what is required to carry the rejection.

II. REPLY TO EXAMINER ARGUMENT REGARDING START AND END SYMBOLS AT
PAGE 12 OF THE ANSWER

The Examiner's Answer provides new argument in contending that Carpentier discloses that

“each file directory and each file of the file directory structure is identified by at least one characteristic start symbol and/or at least one characteristic end symbol ...”

Previously, to support this erroneous contention, the rejection referred generally to Figure 6A, which “illustrates an example of an implementation of a descriptor file ...” (as stated at page 20, lines 4-6 of Carpentier). The Answer seems to accept that this, alone, was insufficient support for the rejection because claim 19 requires more than one file to have the recited attribute. That is, claim 19 requires that **every** file have the attribute of “at least one characteristic start symbol and/or at least one characteristic end symbol ...”

But now, in the Answer, it is apparently contended that the one or more folders, e.g., “net” will meet this requirement. This cannot be correct because claim 19 requires that every file have the attribute of “at least one characteristic start symbol and/or at least one characteristic end symbol ...” Further, claim 19 requires that “the **contents** of each file directory and each file in the directory are stored in each case between the respective characteristic symbols ...” Thus the new argument is deficient because Figure 6A does not illustrate “the contents of ... each file in the directory. It is only an example of a **single descriptor file**. So, it cannot be concluded that said contents are all positioned between the “characteristic symbols. Moreover, there is simply no basis to conclude that Figure 6A of Carpentier does illustrate every file and every file directory as required for the hierarchy levels of claim 19. Claim 19 requires, among other features, *first and second directories, first and second files and a directory structure wherein:*

“each file directory and each file of the file directory structure is identified by at least one characteristic start symbol and/or at least one characteristic end symbol, and wherein the contents of each file directory and each file in the file directory structure are stored in each case between the respective characteristic symbols, said file directory structure enabling the apparatus to operate as a web server ... [Emphasis Added]”

A proper rejection would have to, as a minimum, consistently read all of the above italicized features on Figures 5 and 6A of Carpentier. In the absence of showing a hierarchical structure, this is not possible.

III. REPLY TO EXAMINER ARGUMENT REGARDING “AN APPARATUS CONFIGURED TO RECEIVE FILES” AT PAGES 12-13 OF THE ANSWER

At page 12, the Examiner's Answer once more focuses on language in the preamble of appellants' claim 19, noting that “Lentz discloses the clients (apparatus) are configured to receive configuration files ... through a communication network ...” but the Answer is structured as though the invention might broadly cover the general concept of file transfer over the internet and fails to address the following deficiencies:

Neither Carpentier nor Lenz suggest providing files and updates having the claimed directory structure through a communication network.

The Answer focuses on language in the preamble of claim 19 instead of responding to the deficiencies relating to appellants' teaching for using the claimed file directory structure to enable an apparatus “to control or change operation of the device.” Rather, the Answer slides over this issue and reverts to characterizations that stretch the meaning (of controlling a device) imparted by appellants in order to capture disclosure of Carpentier at page 40, lines 10-12, which relates to an embodiment according to Figure 17.

The disclosure of Carpentier at page 40, lines 10-12, which relates to an embodiment according to Figure 17, appears without reference to the embodiments of Figures 5 and 6 which the Examiner relies upon. The cited passage appears to have marginal or no relation to the claimed subject matter, or to the features of Figures 5 and 6A (Carpentier) which the Examiner relies upon. The citation merely describes “a remote CPU that shares a portion of the processing ...”

In addition to arguing use of Lenz to render language in the preamble obvious, the Answer must show the obviousness of combining references to use the claimed combination of the above-recited file directory structure for enabling the apparatus to operate as a web server. Instead, the Answer argues case law to support hindsight reconstruction of the prior art. Reliance upon In re McLaughlin is wrong because the rejection does not (as suggested by the Examiner) take into account only knowledge which was within the level of ordinary skill. This is evidenced by the Examiner's strained agglomeration of pieces from Carpentier and Lenz, e.g., which appear to have been compiled from a word search directed to a piecemeal reconstruction of claim elements from disparate sources. Appellants do not disagree that at times references may be combined, but if the combination is contrived based on the hindsight teachings of the inventors, then the basis for making the combination is called into question. In the present appeal, the combination of claim 19 is being reconstructed when there is tenuous support that essential elements of claim 19 are present in Carpentier.

IV. REPLY TO EXAMINER ARGUMENT REGARDING DEPENDENT CLAIMS AT PAGE 14 OF THE ANSWER

The Examiner's Answer addresses argument concerning the dependent claims by, again, finding pieces of claimed combinations in the prior art, but shows no basis for recombining these into the claimed invention. For example, by admission, with regard to claim 35 (requiring that the apparatus is an embedded device) the rejection draws upon a "software plug-in" of a descriptor file and takes, out of context, a passage which states

"codes within the descriptor files may automatically send electronic mail. Other actions that may occur include publication on web sites." See page 19, line 32 ff.

None of the foregoing has anything to do with a *file directory structure enabling the apparatus to operate as a web server*. As already discussed above, Carpentier does not disclose a file directory structure enabling the apparatus to operate as a web server.

Conclusion

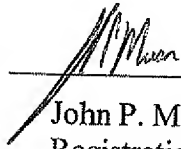
In summary, despite the new points presented in the Examiner's Answer, the rejection still fails to carry the burden of showing (i) the presence of each feature claimed and (ii) that one skilled in the art would so combine Carpentier and Lenz to create the claimed invention. Rather, hindsight knowledge of the invention, resulting only from appellants' patent application, is not license for reconstructing the claimed subject matter. The strained interpretation of the Carpentier reference evidences the shear difficulty of combining the references to meet the terms of the claims.

Based on reasons provided in the previously filed responses to Office Actions, expanded upon in the Appeal Brief, and in view of the several deficiencies resident in the Answer brief, Applicants respectfully submit that the rejections are in error. The Board is therefore respectfully requested to reverse the final rejection of the Examiner and to remand the application to the Examiner with instructions to allow all of the pending claims.

Please grant any extensions of time required to enter this paper. Please charge any appropriate fees due in connection with this paper or credit any overpayments to Deposit Acct. No. 19-2179.

Respectfully submitted,

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